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September 10, 2007

Stephen Silva, Chief
Water Quality Branch
United States EPA Region I
One Congress Street Suite 1100
Boston, MA 02114-2023

Re: Massachusetts Surface Water Quality Standards

Dear Mr. Silva:

In response to questions that EPA has raised during its review of recent amendments to the Massachusetts Surface Water Quality Standards ("WQS"), I am writing to clarify the provision related to compliance schedules found at 314 CMR 4.03(1)(b).

The first question related to the meaning of the italicized portion of following sentence:

The Department may include a schedule of compliance in a permit at the time of permit reissuance or modification where the permittee either cannot comply with such permit requirements or limitations, *or there is insufficient information available to determine whether the permittee can comply with such permit requirements or limitations.*

The purpose of this sentence is to account for the circumstance where there is not sufficient information about the capability of an existing treatment plant to meet a new water quality-based effluent limit ("WQBEL") immediately upon permit issuance. This sentence is not intended to allow a compliance schedule to provide time to decide whether the WQBEL ultimately is attainable or what the correct WQBEL should be. MassDEP intends to continue the practice it has followed since compliance schedules were originally authorized in the WQS in 1996, which is to establish in the permit final dates for compliance with the WQBEL as well as interim milestones for schedules that last longer than one year.

The second question related to whether it is the permittee's burden to demonstrate the need for a compliance schedule, or MassDEP's burden to demonstrate that there is no need for a compliance schedule. The allowance of a compliance schedule is clearly discretionary ("[t]he Department *may* include a schedule of compliance...") and MassDEP has always interpreted the

compliance schedule provision in the WQS to place the burden on the permittee to demonstrate the need for a schedule, rather than the other way around. The 2006 amendments did nothing to shift this burden.

I hope that these clarifications address EPA's concerns and that this provision, along with the other pending WQS revisions, will be approved in the near future. Should you have any questions regarding this matter, please do not hesitate to contact Marcia Sherman of my staff at 617/556-1198.

Sincerely,

A handwritten signature in blue ink, appearing to read "Glenn Haas", with a long horizontal flourish extending to the right.

Glenn Haas, Acting Assistant Commissioner
Bureau of Resource Protection

cc: Ann Williams, EPA
Bill Beckwith, EPA
Marcia Sherman, DEP
Rick Dunn, DEP
Russell Isaac, DEP